

**Prepared Testimony**

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**The US-Indian Civil Nuclear Deal**

Let me begin by noting that nonproliferation experts in the United States appear to share a remarkable degree of consensus on the proposed US-Indian civil nuclear deal. They seem to agree that strengthening our relationship with India may well advance US political, economic, scientific and military interests. Some, including myself, believe that nuclear power could play an important role in helping India meet its rapidly growing electricity needs. However, the vast majority, if not all, of US nonproliferation experts agree that the US-Indian civil nuclear deal, as presently proposed by the Administration, will risk serious damage to our efforts to prevent the spread of nuclear weapons. This consensus is extraordinary and unprecedented because these nonproliferation experts span the political and ideological spectrum and have often fought like cats and dogs with each other over the years on a variety of nonproliferation issues. However, they are in fundamental agreement about the nonproliferation risks of the proposed US-India civil nuclear deal.

If Congress feels obliged to go along with proposed deal for the sake of US-Indian relations, it has the opportunity to take steps that could help to minimize the potential damage to US national security and preserve our credibility as a leader in the nonproliferation field. The Administration's proposal to implement this deal involves creating an exception for India from several provisions of the Atomic Energy Act and Congressional review of a US-Indian peaceful nuclear cooperation agreement.

While I believe that making civil nuclear cooperation the centerpiece of a new strategic relationship with India is a mistake, I would like to recommend several steps that the Congress could take in approving this arrangement that would both help safeguard US nonproliferation interests and allow the US-India deal to go forward. I will also identify a number of issues that Congress should keep an eye on, once the Executive Branch submits the text of a US-Indian peaceful nuclear cooperation agreement for Congressional review. Some of these matters may appear to be arcane, but they are important because, as we all know, the devil is always in the details.

**Treat the Peaceful Nuclear Cooperation Agreement as an Exempted Agreement**

Implementation of the US-Indian deal and the ability of the US to export nuclear materials and equipment to India will require the conclusion of a peaceful nuclear cooperation agreement between the US and India, sometimes called a “123 agreement”. (This refers to the Section of the Atomic Energy Act that defines the nonproliferation conditions that such agreements must contain and the procedures for Congressional review and approval.)

Both Secretary of State Condoleezza Rice and Under Secretary of State for Political Affairs R. Nicholas Burns have characterized this peaceful nuclear cooperation agreement as “merely a technical agreement.” Under Secretary Burns has said that

“The bilateral agreement is a largely technical agreement that will not entail a tremendous amount of give and take between the two governments because we've resolved the issues. .... And I think that that agreement should proceed expeditiously. It would surprise me if it took much time at all.”

I do not know who wrote the talking points for Ms. Rice and Mr. Burns, but, as someone who has been involved in negotiating most of our peaceful nuclear cooperation agreements since enactment of the Nuclear Non-Proliferation Act (NNPA) of 1978, I have to say that nothing could be further from the truth. These are not mere technical agreements. All the Republican and Democratic Administrations that I worked for have regarded such agreements as critically important to the national security interests of the United States since they contain fundamental nonproliferation assurances, guarantees and controls to ensure that exports of US nuclear materials, equipment and technology to other countries are not diverted to nuclear explosive uses or military purposes. Our cooperating partners have accorded the same importance to such agreements since they impose significant obligations and burdens on their civil nuclear programs.

Moreover, Congress itself has never regarded peaceful nuclear cooperation agreements as mere “technical” arrangements but as serious nonproliferation accords. The crucial importance that Congress has accorded such agreements is evidenced by the fact that Congress has enacted legislation (the Atomic Energy Act as amended by the NNPA) that sets forth in considerable detail the various nonproliferation assurances, guarantees, conditions and controls that each such agreement must contain, identifies the agencies of the Executive Branch that are to negotiate 123 agreements as well as the agencies that are to review them. Congress has also specified the documentation the Executive Branch must submit to Congress and outlined the specific Congressional procedures for reviewing and/or approving such agreements. In addition, Congress has specified which agencies are to implement the agreement, e.g., in issuing export licenses, approving technology transfers and approving retransfers of US nuclear material, equipment and components from one country to another and has delineated the criteria the Nuclear Regulatory Commission or the Executive Branch must adhere to in approving nuclear exports licenses and retransfer requests. I am not aware of any other kind of international agreement that Congress has treated with such interest, attention and specificity as peaceful nuclear cooperation agreements.

All this is important because the Administration is asking the Congress to surrender its prerogative to approve the US-Indian agreement as an agreement that does not contain all the

guarantees and controls specified in the Atomic Energy Act. The Act provides that an agreement that contains all of the nonproliferation conditions of Section 123 may enter into effect after the President has been submitted it to Congress for ninety legislative days and provided Congress does not enact legislation to disapprove it. However, both Houses of Congress must vote to approve any agreement that does not contain all the nonproliferation requirements of Section 123. The US-Indian peaceful nuclear cooperation agreement that the Administration will submit to Congress will lack at least one of the key requirements of Section 123, namely an Indian commitment to place all its nuclear activities under International Atomic Energy Agency (IAEA) safeguards—the so-called “full-scope safeguards” requirement.

My first recommendation, therefore, is that Congress decline to enact the provision in the Administration’s proposed legislation that would strip the ability of Congress to approve a peaceful nuclear cooperation agreement that does not meet all the requirements of the Atomic Energy Act. No President has ever approved or submitted to Congress an agreement for cooperation that lacked any of the statutorily required conditions for such agreements. I am concerned that the Administration’s proposal will serve to circumvent Congressional oversight and approval procedures for an agreement that will not contain all the nonproliferation assurances and conditions set out in Section 123 of the Atomic Energy Act.

### **Avoid Piece-meal Approval of the US-Indian Nuclear Deal**

My second recommendation is that Congress refrain from approving the US-India civil nuclear deal on a piecemeal basis. This proposed deal consists of several elements: 1) the Administration’s proposed legislation, 2) the text of a US-Indian peaceful nuclear cooperation agreement (which is yet to be negotiated), 3) the Indian-IAEA safeguards agreement which the Indians say will be India-specific and therefore unlike standard IAEA safeguards agreements, and 4) an agreement among the members of the Nuclear Suppliers Group (NSG) to exempt India from their long-standing requirement that non-nuclear-weapon states place all their nuclear activities under IAEA safeguards as a condition for receiving nuclear supplies. Before it approves the legislative package that the Administration has proposed, the Congress should insist on having an opportunity to review the text of the agreement for cooperation that the Administration will negotiate with the Indians. Congress should also insist on being assured that the Indian-IAEA safeguards agreement meets appropriate international standards and that the NSG is prepared to go along with exempting India from the full-scope safeguards condition. The 45 members of the NSG make decisions on the basis of consensus, and their consent to the US proposal is, by no means, a slam dunk. Various members of the NSG have expressed concern about the US proposal on India. In particular, some non-nuclear-weapon states (NNWS) party to the Non-Proliferation Treaty (NPT) regard the US-Indian deal as a betrayal of the bargain that the US made with them when they joined the Treaty. It is also not clear whether China will support the US proposal, or whether it will insist that the NSG accord Pakistan the same treatment as India.

### **Do Not Waive All the Requirements of Section 129 of the Atomic Energy Act.**

My third recommendation concerns the Administration’s proposed legislation that requests Congressional consent to “waive the application of any sanction under section 129 of the Atomic

Energy Act with respect to India.” Section 129 defines certain actions by a cooperating partner that would trigger the termination of US nuclear cooperation with that country. It is understandable that the Administration would seek the waiver of two of these sanctions, namely that the US terminate nuclear cooperation with any non-nuclear weapon state that

1) has detonated a nuclear explosive device in the past (paragraph (1) (A) of Section 129) after 1978, and

2) engaged in activities involving nuclear weapons development (paragraph 1 (D) of Section 129).

The waiver of these sanctions will be necessary to initiate nuclear cooperation with India. However, remarkably the Administration is also asking Congress to agree that US nuclear exports could continue even if India

Terminated or abrogated IAEA safeguards--Paragraph 1 (B)

Materially violated an IAEA safeguards agreement--Paragraph 1 (C).

Materially violated an agreement for cooperation with the United States or violated the terms under which the US supplied material and equipment outside an agreement or enriched US-supplied nuclear material without the prior approval of the United States--Paragraph 2 (2) (A).

Assisted, encouraged or induced any non-nuclear weapon to acquire or manufacture of nuclear explosive devices—Paragraph (2) (B).

Entered into an agreement for the transfer of reprocessing equipment, materials or technology to the sovereign control of a non-nuclear weapon state unless it were part of a international arrangement to which the United States participated in or subscribed to -- Paragraph (2) (C).

In my view, there is no reason that India should be exempted from these sanctions. Our agreements with all other states contain provisions that give the United States the right to terminate nuclear cooperation if the other party terminates, abrogates or materially violates safeguards or materially violates the agreement for cooperation. What the Administration is saying is that the US will cut off nuclear trade with NPT parties if they do these things but not if India, which is not a party to the NPT, does. This makes no sense. I am certainly not suggesting that India or any other cooperating partner would do these things. That is not my point. These Section 129 provisions contain vitally important sanctions that Congress has decided should apply to any cooperating partner that would engage in such activities. Exempting India from these sanctions would send the wrong signal and seriously damage the international nonproliferation regime.

**Insist that India Pledge Not to Assist Other Countries in the Manufacture or Acquisition of a Nuclear Explosive Device**

Frankly I find it particularly mind-boggling that the Administration is proposing to exempt India from sanctions if it assists another non-nuclear weapon state to manufacture or acquire a nuclear explosive. The Administration's proposal is particularly disturbing in light of the July 18, 2005, US-Indian statement in which

“President Bush conveyed his appreciation to the Prime Minister over India's strong commitment to preventing WMD proliferation and stated that as a responsible state with advanced nuclear technology, India should acquire the same benefits and advantages as other such states.”

Rather than exempting India from these sanctions, the Congress should insist that India make the same pledge to the United States that is contained in Article I of the NPT, namely, that India will not “ transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.”

India has assumed no such legal obligation. The Indians have been historically hostile to the NPT, and they may therefore find it difficult to accept this particular language from the NPT. However, I am confident that the Indians have no intention of assisting another state in acquiring a nuclear weapon. They should be able to find a formulation that suits them and that reflects this intention in legally binding language. The Indians could make such a pledge in the US-Indian peaceful cooperation agreement itself or in a separate understanding with the United States.

### **Pay Close Attention to the Details of the Peaceful Nuclear Cooperation Agreement**

Given the importance to US national security and nonproliferation interests of peaceful nuclear cooperation agreements, Congress should pay close attention to a number of issues that are likely to arise in connection with the text of proposed US-Indian peaceful nuclear cooperation agreement that the Executive Branch will eventually submit to Congress. Some of the major issues that bear close attention are the following.

Prohibition of Nuclear Explosive Devices. The Atomic Energy Act requires that a cooperating partner refrain from using nuclear materials and equipment subject to a peaceful nuclear cooperation agreement for any nuclear explosive device, for research on or development of any nuclear explosive device or for any military purpose. However, after it had detonated a nuclear explosive device in 1974 using plutonium from a research reactor supplied by Canada and heavy water from the United States under peaceful use assurances, the Indian Government took the position that there is a difference between a nuclear weapon and a so-called peaceful nuclear explosive. India also denied that the 1963 US-Indian peaceful nuclear cooperation agreement prohibited the use of items subject to that agreement for so-called peaceful nuclear explosives. The US took the position that the prohibition on the use of items subject to that agreement for atomic weapons also included a ban on peaceful nuclear explosive devices. In addition, the Atomic Energy Act requires that cooperating parties agree not to use US materials and

equipment subject to US peaceful nuclear cooperation agreements for nuclear weapons or any nuclear explosive devices, and non-nuclear-weapon states party to the NPT forswear the acquisition and manufacture of both nuclear weapons and nuclear explosive devices. The text of the US-Indian agreement for cooperation should explicitly preclude the use of items subject to the agreement for nuclear explosives or for any military purpose.

The Indian Safeguards Agreement and Perpetuity of Safeguards. The agreement for cooperation should provide, as required by the Atomic Energy Act, that IAEA safeguards will be maintained so long as the material remains under the jurisdiction or control of India, “irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason.”

Normally, safeguards agreements between a state and the IAEA are based on, and are in accordance with, model IAEA safeguards agreements. However, according to the Indians, the safeguards agreement or agreements that they will negotiate with the IAEA for their civil nuclear facilities will be “India-specific” and they will effectively recognize India as a nuclear weapons state in “a category of its own.” The March 7, 2006, Indian plan for separating its civilian and military nuclear facilities seems to be making perpetuity of safeguards dependent on the assurance of supply or to be seeking a guarantee of supply regardless of Indian behavior. That plan states:

“To further guard against any disruption of fuel supplies, the United States is prepared to take the following additional steps:

- (i) The United States is willing to incorporate assurances regarding fuel supply in the bilateral U.S.-India agreement on peaceful uses of nuclear energy under Section 123 of the U.S. Atomic Energy Act, which would be submitted to the U.S. Congress.
- (ii) The United States will join India in seeking to negotiate with the IAEA an India-specific fuel supply agreement.
- (iii) The United States will support an Indian effort to develop a strategic reserve of nuclear fuel to guard against any disruption of supply over the lifetime of India's reactors.
- (iv) If despite these arrangements, a disruption of fuel supplies to India occurs, the United States and India would jointly convene a group of friendly supplier countries to include countries such as Russia, France and the United Kingdom to pursue such measures as would restore fuel supply to India.

In light of the above understandings with the United States, an India-specific safeguards agreement will be negotiated between India and the IAEA providing for safeguards to guard against withdrawal of safeguarded nuclear material from civilian use at any time as well as providing for corrective measures that India may take to ensure uninterrupted operation of its civilian nuclear reactors in the event of disruption of foreign fuel

supplies. Taking this into account, India will place its civilian nuclear facilities under India-specific safeguards in perpetuity and negotiate an appropriate safeguards agreement to this end with the IAEA.”

What is meant by all this is not at all clear, except that it appears that India intends to negotiate some kind of special safeguards agreement or agreements with the IAEA that differ in some way from the model safeguards agreements that are standard for non-NPT non-nuclear-weapon states and that now apply to the Indian reactors at Tarapur and Rajasthan and that last in perpetuity. In addition, the safeguards the Indians intend to negotiate with the IAEA appear to be dependent in some way on assurances of supply. This would represent an unprecedented erosion of the principle of perpetuity of safeguards which is enshrined in IAEA safeguards agreements.

The new Indian-IAEA safeguards agreement will be submitted to the IAEA Board of Governors for approval. I recommend that Congressional approval of the deal be contingent on a Presidential certification to the Congress that the safeguards agreement or agreements that India concludes with the IAEA: 1) are in accordance with IAEA standards, principles and practices, 2) provide for the perpetuity of safeguards and 3) do not make perpetuity of safeguards contingent on any assurances of nuclear supply.

Moreover, neither the Indian-IAEA safeguards agreement nor the 123 agreement should permit India to remove any civil facilities or materials from safeguards if the US does not or cannot assure supply of nuclear fuel to Indian reactors.

The US-Indian peaceful nuclear cooperation agreement should also contain a binding Indian commitment to allow the application of IAEA safeguards not only to nuclear materials and equipment subject to the US-Indian agreement but also to the facilities that the Indian Government has identified as civilian in connection with the March US-Indian agreement on separation of Indian civil and military facilities.

Additional Protocol to IAEA Safeguards Agreement. The Congress should require that cooperation under the agreement be contingent on the conclusion of an Additional Protocol between India and the IAEA.

Fall-back Safeguards. The agreement should contain fall-back safeguards. All our agreements for cooperation concluded since enactment of the Nuclear Non-Proliferation Act of 1978 contain a provision that, if either party becomes aware that for any reason the IAEA is not applying or will not apply the safeguards as required by the agreement, then the US would have the right immediately to enter into arrangements to inspect nuclear materials and facilities subject to the peaceful nuclear cooperation agreement.

Assurances of Supply. As noted above, the March 7, 2006, Indian separation plan said,

“The United States is willing to incorporate assurances regarding fuel supply in the bilateral U.S.-India agreement on peaceful uses of nuclear energy under Section 123 of the U.S. Atomic Energy Act, which would be submitted to the U.S. Congress.”

It is unclear how this US pledge to provide India with assurances of supply will be reflected in the peaceful nuclear cooperation agreement. Although it is vitally important that the US make every effort to be a reliable supplier of nuclear fuel, the US Government is not in a position, under current practices, to guarantee nuclear fuel supply to India. First, the US Government is no longer in the business of selling enriched uranium. The production and sale of enriched uranium by the United States is in the hands of private industry. Second, US peaceful nuclear cooperation agreements are not commitments to supply but rather provide the legal framework under which US nuclear exports may take place. Third, exports of nuclear material from the United States to another country require an export license from the Nuclear Regulatory Commission, an agency of the US Government that is independent of the Executive Branch. Finally, in all our current agreements for cooperation, the US has not committed to supply, but it has agreed to facilitate nuclear trade. In light of these circumstances, the Congress should pay close attention to any legal obligations the Administration proposes to assume in the text of the US-Indian agreement for cooperation to guarantee India nuclear fuel supplies. The US should not be giving assurances to India that we have not given to our other cooperating partners, who are parties to the NPT. NPT parties would have valid grounds for complaining that we were giving non-NPT parties more favorable treatment than states that have agreed to refrain from acquiring or manufacturing nuclear explosive devices and to accept IAEA safeguards on all their nuclear activities.

Inclusion of Nuclear Materials and Equipment Covered by the Expired US-Indian Agreement in the New US-Indian Agreement. The non-proliferation assurances and conditions in the new agreement should apply to the nuclear materials and equipment for the Tarapur reactors that the United States supplied under the 1963 US-Indian agreement that expired in 1993. The US and India have had a number of significant differences about that expired agreement. These included: 1) whether the 1963 agreement prohibited the use of nuclear material and equipment subject to the agreement for nuclear explosive purposes, 2) whether the US had actually given consent to reprocessing of US-supplied fuel from the Tarapur reactors, and 3) whether the nonproliferation assurances and controls contained in the 1963 agreement continued after the expiration of the agreement in 1993. It is important to our nonproliferation interests that the Tarapur reactors and the spent fuel irradiated in those reactors be explicitly subject to the new US-Indian agreement for cooperation and thus to various nonproliferation assurances and controls required by the Atomic Energy Act. Otherwise, the Indians might very well regard these materials and equipment as free from any nonproliferation controls. All of the peaceful nuclear cooperation agreements concluded since enactment of the NNPA contain nonproliferation conditions that apply to the equipment and materials supplied under the agreements that they replaced.

Perpetuity of All Nonproliferation Assurances and Controls. The agreement should provide for the continuation in perpetuity of all the nonproliferation assurances and conditions, not just IAEA safeguards, that are contained in the agreement, notwithstanding the expiration or termination of the agreement. All our peaceful nuclear cooperation agreements since enactment of the NNPA contain a provision providing for the perpetuity of all nonproliferation assurances, guarantees and conditions.



Consent Rights. The agreement for cooperation should contain all of the so-called consent rights required by Section 123 of the Atomic Energy Act. These include the right of the United States to consent to the enrichment of uranium supplied by the United States, reprocessing or alteration in form and content of spent fuel produced from US-supplied nuclear material, the storage of weapons-usable material subject to the agreement, and the retransfer to third countries of nuclear materials and equipment subject to the agreement. Indian nuclear energy plans include the reprocessing of spent fuel from its power reactors and the use of the recovered plutonium as mixed-oxide fuel in their nuclear power program. The Indians may not wish to accept any US right to approve reprocessing and the use of the recovered plutonium or may insist that the US give advance, long-term consent to such activities. The US has always been extremely cautious about giving consent to such sensitive activities as reprocessing since it produces a directly-weapons usable material--plutonium. We have given advance, long-term consent to such reprocessing only to our closest allies in EURATOM and Japan. (These states are parties to the NPT, have security alliances with the US, and have excellent nonproliferation credentials.) The Congress should insist that the US have such consent rights over sensitive nuclear activities in the agreement with India, and that the US will not grant advance, long-term consent to reprocessing and the use of plutonium in India.

Restricted Data and Sensitive Nuclear Technology. The agreement should ban the export of restricted data (RD) as well sensitive nuclear technology (SNT) i.e., enrichment, reprocessing and heavy water production technology, to India. Our agreements for cooperation traditionally have prohibited the transfer of both RD and SNT. The Congress should insist that Administration give assurances that it will not transfer SNT outside of the agreement and that it will not transfer to India any enrichment, reprocessing or heavy water technology that is not in the public domain even if the Department of Energy deems that such technology is not SNT.

Grounds for Terminating Nuclear Cooperation under the Agreement. As I have noted above, the Congress should reject the Administration's request to exempt India from all the sanctions contained in Section 129 of the Atomic Energy Act. In addition, the US-Indian peaceful nuclear cooperation should contain explicit US rights to terminate nuclear cooperation in the event

India detonates a nuclear explosive device. (Section 129 of the Atomic Energy Act requires the termination of US nuclear exports to any non-nuclear-weapon state that the President has found to have detonated a nuclear explosive device after 1978. While India should be exempted for its nuclear weapons tests in 1998, the US should retain the right to terminate nuclear cooperation in the event India conducts any nuclear tests in the future.)

India terminates or abrogates or materially violates an IAEA safeguards agreement or materially violates the US-Indian peaceful nuclear cooperation agreement. (As noted above, Section 129 of the Atomic Energy Act requires the termination of nuclear exports under such conditions.)

In addition, the US-Indian agreement should contain a US right, as required in Section 123 of the Atomic Energy Act, to require the return of any nuclear materials and equipment subject to the

agreement if India detonates a nuclear explosive device or terminates or abrogates an IAEA safeguards agreement.

Although the Indians have not tested a nuclear weapon since 1998, this could be a contentious issue for them. According to a report in the Times of India of April 18, 2006, a spokesperson for the Indian Government stated,

“The United States had shared with India some weeks ago a preliminary draft agreement on India-U.S. civil nuclear cooperation under Article 123 of the U.S. Atomic Energy Act. Among the elements suggested by the US side is a reference to cooperation being discontinued were India to detonate a nuclear device. In preliminary discussions on these elements, India has already conveyed to the United States that such a provision has no place in the proposed bilateral agreement.”

Notwithstanding these Indian objections, this is a requirement of the Atomic Energy Act, and Congress should insist that it remain a fundamental condition for nuclear cooperation with India. Since enactment of the NNPA in 1978, US agreements with non-nuclear-weapon states contain explicit rights to terminate nuclear cooperation and to require the return of items subject to the those agreements in the event the cooperating party engages in any of the actions described above.

### **No Favorable Treatment for India**

Congress should ensure that the terms under which the US engages in peaceful nuclear cooperation with India do not afford India any benefits that we have not provided our close allies and states that have accepted the obligations of the NPT. Congress should enact a resolution of approval requiring that, with the sole exception of exempting India from the full-scope safeguards requirement, the US-Indian peaceful nuclear cooperation agreement will not afford India more favorable treatment than the US has accorded NPT parties.

### **Fissile Material Production for Nuclear Weapons**

Finally, let me say a few words about the question of continued Indian production of plutonium and highly enriched uranium. Many critics of the proposed US-India nuclear deal have argued that its greatest deficiency is its failure to oblige India to cease the production of fissile material for nuclear weapons purposes. I agree wholeheartedly. The Administration, on the other hand, points to India's pledge to work with the United States for the conclusion of a multilateral fissile material cutoff treaty (FMCT). However, this pledge may not be very meaningful, and it will place no real limits on Indian fissile material production for its nuclear weapons program for many years to come. First, the Administration itself has caused considerable uncertainty about the future of this treaty by asserting that an FMCT cannot be adequately verified. Other states have always envisioned that an FMCT would have effective verification provisions. Second, although the US proposed an FMCT in 1993 and the UN General Assembly adopted a resolution later in the same year calling for the negotiation of such a treaty, almost 13 years later the Conference on Disarmament has still not been able even to begin negotiations. If and when

those negotiations begin, an FMCT will require many years to conclude. In the meantime, India will remain free to produce increased quantities of fissile materials for its nuclear weapons program, even though the five NPT-recognized nuclear-weapon states have all ceased the production of plutonium and highly enriched uranium (HEU) for nuclear weapons purposes. Again remarkably, the US-Indian deal does not even commit India to work towards a regional fissile material cutoff arrangement.

The Indian Government and the Administration have both said that any requirement for India to cease production of fissile material for nuclear weapons would be a deal killer. Perhaps this is true. However, this is an important defect of the proposed deal, and Congress should consider a number of steps that could ameliorate this situation. Possibilities include the following:

Condition US nuclear cooperation on Indian agreement to terminate the production of plutonium and highly enriched uranium for nuclear explosive purposes within a certain defined period of time.

Require India to pledge now to declare all future electricity producing reactors as civilian and to place them under permanent IAEA safeguards. (The Administration asserts that the Indians have agreed to place all future civilian reactors in India under IAEA safeguards. However, what they neglect to point out is that India has made no commitment to declare any future reactors civilian. The Indians, on the other hand, have made it clear that this decision is theirs alone to make.)

Require India to make the same arms control pledge contained in Article VI of the NPT, namely to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control. (Again, India might object to employing language from the NPT but it could come up with language of its own that would be the equivalent of that in the NPT.)

Mark Hibbs has reported in the most recent edition of the trade publication, Nuclear Fuel, that India is scheduled to make a decision early next year to construct a new, large (100 Megawatt) and unsafeguarded plutonium production reactor, the same size as the existing Dhruva reactor, which would be capable of producing some 20 to 25 kilograms of weapons-grade plutonium per year. If India decides to build this reactor, it would certainly be taking a step in the wrong direction.

Surely the US and Indian Governments can devise some realistic Indian commitment that would move India in the right direction on fissile material production and would lead to an Indian halt in its production of plutonium and highly enriched uranium for nuclear explosive purposes, and sooner rather than later.

## **Conclusion**

Let me conclude by urging Congress to examine this proposed US-Indian deal very carefully and in its totality. I believe it would be a mistake to accept the Administration's proposal that asks

Congress to surrender its prerogatives to approve the agreement. Congress should also insist on seeing the entire package rather than approve it on a piece-meal basis.

The conditions of approval that I have suggested may seem numerous and burdensome. However, we require virtually all of them of all our other cooperating partners. I am not suggesting conditions that would single out India for discriminatory treatment. Moreover, I believe that the various conditions that I have proposed should not be deal-killers, provided the Administration and the Government of India show a reasonable degree of flexibility. I hope that the Congress will give these recommendations serious consideration and that, if Congress decides to approve the US-Indian civil nuclear arrangement, it will adopt the conditions of approval needed to ameliorate the damage that this deal could do to the international nonproliferation regime.